Supreme Court, U.S.
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No. 09-____

In the Supreme Court of the United States

PLACER DOME, INC. AND BARRICK GOLD CORPORATION,

Petitioners,

v.

PROVINCIAL GOVERNMENT OF MARINDUQUE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Did the Ninth Circuit's reversal of the district court's dismissal on grounds of *forum non conveniens* before deciding jurisdictional issues improperly restrict the discretion granted in *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 425 (2007), and apply an incorrect standard of review?

2. Does federal question jurisdiction exist based on the federal common law of foreign relations where substantial foreign policy concerns are implicated, though not expressly stated on the face of the complaint? The Second, Fifth, and Eleventh Circuits extend jurisdiction in such cases but the Ninth Circuit applies a more restrictive test that excludes such cases from federal court.

PARTIES TO THE PROCEEDING

Pursuant to Supreme Court Rule 14.1(b), petitioner states that all parties appear in the caption of the case on the cover page.

CORPORATE DISCLOSURE STATEMENT

Placer Dome, Inc. ("PDI") PDI is wholly amalgamated into Barrick Gold Corporation. There is no parent or publically held company owning 10% or more of the corporation's stock.

Barrick Gold Corporation. There is no parent or publically held company owning 10% or more of the corporation's stock.

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evade any real responsibility for the damages sustained on Marinduque.

164. As noted above, after the Maguila-Guila Dam collapsed in December 1993, Placer Dome refused to accept any responsibility for the resulting death and destruction. Instead, Steven Reid, the Placer-Dome appointed Resident Manager of the mining operation, claimed that Placer Dome was not legally responsible for the dam collapse because it was caused by "unusual rainfall due to a typhoon."

165. Less than three years later, Placer Dome shifted the blame for the Boac River disaster — claiming that the plug had collapsed due to shock waves from a minor earthquake.

166. Despite continuing to blame heavy rainfall for the burst siltation dam, and the earthquake for the Boac River disaster, Placer Dome eventually acknowledged its duty and commitment to compensate the victims of the disaster and to remediate the Boac River. Or so it seemed. On April 11, 1996, John Willson, Placer Dome's President, wrote to Philippine President Fidel Ramos, stating that:

> The residents of Marinduque who have suffered personal inconvenience or damage to their property as a result of the Marcopper event will be quickly and fairly compensated. In this regard Marcopper has a clear responsibility to repair the damage and pay compensation for the loss caused by the discharge of tailings into the environment. As a major shareholder, Placer Dome is

committed to ensuring that Marcopper will meet all its legal obligations.

167. In reliance on Placer Dome's promises, the Philippine government decided not to pursue more aggressive measures to compensate the victims of the disaster.

168. Placer Dome, however, has never lived up to its promises to the Philippine government, the Province, or the people of Marinduque. Although Placer Dome recently paid in some funds to an Environmental Guarantee Fund to compensate fishermen and other villagers affected by the disaster, thousands of them have yet to be compensated at all. The fund is woefully deficient to compensate for the harm caused by Placer Dome.

169. Placer Dome, moreover, employed only the most half-hearted effort to remediate the Boac River. Specifically, in 1997, it built a dredge tunnel at the mouth of the Boac River hoping that it would catch the mine tailings flowing down the river and prevent them from going out to sea. However, because Placer Dome did not dig the dredge tunnel deep enough, it did not catch all of the tailings and many of them escaped out to the sea where they damaged marine life. Moreover, Placer Dome never attempted to remove the tailings caught by the dredge tunnel. They remained in the river.

170. Shortly after sponsoring this so-called remediation effort, Placer Dome purportedly divested itself of any interest in Marcopper. First, Placer Dome transferred its shares in Marcopper to a company called BC Holdings, Ltd. Next, Placer Dome

sold BC Holdings, Ltd. to Marcopper for a grand total of $1.00. Placer Dome then fled from the Philippines and left its wholly owned subsidiary, Placer Dome Technical Services ("PDTS"), to address the havoc left behind by mine tailings in and around the Mines.

171. But Placer Dome did not address the tailings problem with substance. Instead, it chose "PR," publishing a 34-page comic book entitled "The Marcopper Mine Spill Story," which was filled with cartoon pictures and propaganda regarding the "accidental mine spill."

172. According to Placer Dome's comic book, an "earthquake" caused "mine waste . . . to leak into the river." Although "the fish moved away after the spill," PDTS claimed those fish "will come back again when the river water is clean again." As "the company responsible for cleaning the river," PDTS promised "to rehabilitate the Boac River," which would "be mostly clean by 1998." Like Placer Dome, PDTS never lived up to its promises.

173. In 1997, PDTS applied for a permit from the DENR to dump those mine tailings into the ocean through an underwater pipe. PDTS pushed for this disposal method, known as Submarine Tailings Disposal ("STD"), because it was the cheapest available alternative. But PDTS failed to tell the DENR that STD has long been effectively banned in Canada -- Placer Dome's home country - as well. as in the United States, because it is not considered to be a safe method for disposing of mine tailings.

174. In fact, when Canada experimented with STD in 1971, it found that, after being dumped into

the sea, the tailings dispersed over a very wide area and severely affected marine life in shallow waters. Consequently, the Canadian government banned the use of STD in 1977, and has consistently resisted pressure from the mining industry to reverse that decision since then.

175. Even though PDTS had concealed these problems with STD, the DENR rejected the STD permit application on October 30, 1997. The DENR Secretary, Victor Ramos, noted that, under Philippine laws and regulations, offshore areas "are considered to be Environmentally Critical Areas."

176. In 1998, PDTS sponsored a half-hearted remediation effort of its own. It paid local residents to fill sandbags with the toxic mine tailings, using only their bare hands. PDTS then left those bulging sandbags rotting on the banks of the Boac River.

177. On February 16, 1999, PDTS re-applied for an STD permit. To dispel any opposition to that application, a PDTS representative, Orly Cruz, threatened residents that if they successfully opposed the STD application, PDTS would just "go away and leave the tailings in the river." Once again, the DENR denied the STD application.

178. PDTS eventually followed through on its threat to "go away and leave the tailings in the river," After failing to obtain a permit for its low-cost, high-risk disposal method, PDTS secretly divested its Marcopper shares in November 2001. One month later, just before Christmas, PDTS suddenly closed its offices in Marinduque and Manila, and pulled out of the Philippines. Like Placer Dome, PDTS also

abandoned Marinduque, broke its promises, and left its tailings behind.

c. Placer Dome's Evasion of Civil and Criminal Liability.

179. Since fleeing the Philippines in 1997, Placer Dome has repeatedly evaded efforts to impose civil or criminal liability on Placer Dome for its actions in Marinduque.

180. Placer Dome officials, for example, have stalled criminal proceedings with multiple appeals based on procedural technicalities.

181. In April 1996, the DENR brought criminal charges against two Placer Dome-appointed officers of Marcopper: (a) John Loney, the Placer-Dome appointed President and CEO of Marcopper; and (b) Steven Reid, the Placer-Dome appointed Resident Manager of the mining operation (collectively the "Placer Dome Officials").

182. In the indictment, the DENR alleged that the Placer Dome Officials had violated provisions of the Pollution Control Law, the Revised Penal Code, the Philippine Mining Act of 1995, and the Water Code of the Philippines.

183. With respect to the Pollution Control Law, the DENR alleged that the Placer Dome Officials had violated a prohibition against dumping substances that cause pollution into Philippine waters. In support of this allegation, the DENR's indictment stated that water samples from 16

different locations in the Boac River contained dangerous levels of cadmium, copper, and lead.

184. With respect to the Revised Penal Code, the DENR alleged that the Placer Dome Officials had violated a prohibition against engaging in reckless imprudence resulting in damage to property. In support of this allegation, the DENR's indictment stated that Placer Dome was aware that mine tailings were seeping into the drainage tunnel beneath the Tapian Pit by at least August 1995. According to the indictment, Placer Dome recklessly chose to ignore this problem, which resulted in the massive spill of mine tailings into the Boac River less than one year later.

185. With respect to the Philippine Mine Act of 1995, the DENR alleged that the Placer Dome Officials had violated a prohibition against willfully violating, or grossly neglecting to abide by, an Environmental Compliance Certificate ("ECC"). According to the indictment, the DENR had issued an ECC to Placer Dome requiring that it: (a) dump mine tailings into the Tapian Pit only until an alternative disposal method could be developed and (b) ensure that run-off and silt materials were prevented from reaching the Mogpog and Boac Rivers. The DENR alleged that the Placer Dome Officials willfully violated this ECC by failing to take steps to prevent mine tailings from seeping into the drainage tunnel beneath the Tapian Pit.

186. With respect to the Philippines Water Code, the DENR alleged that the Placer Dome Officials had violated a prohibition against performing acts that result in the introduction of

polluting substances into a source of water supply. In support of this allegation, the DENR charged that Placer Dome's mine tailings had transformed the Boac River into a dead river.

187. Rather than respond to these serious allegations, the Placer Dome Officials, like Placer Dome itself, fled the Philippines. Indeed, both Loney and Reid received promotions to high-level management positions within Placer Dome's corporate headquarters back in Canada. They also filed a motion to quash the indictment, which the trial court denied in part. The Placer Dome Officials then appealed that ruling to the Court of Appeals, which held that all criminal charges against the Placer Dome Officials could proceed to trial in the Philippines. Unwilling to stand trial for their actions, the Placer Dome Officials filed yet another appeal to the Philippine Supreme Court, which is currently considering the matter.

188. Placer Dome has also dodged any and all efforts to impose civil liability for its actions. In 2001, a group of Marinduquenos filed suit against Placer Dome in the Philippines, seeking damages for property destroyed by the collapse of the Maguila-Guila Dam. In 2004, another group of Marinduquenos filed suit against Placer Dome in the Philippines, seeking damages for health problems that Placer Dome caused to individuals living around Calancan Bay. To date, Placer Dome has successfully avoided being served with process in either suit.

189. Placer Dome has also refused to appear at hearings before the Committee on Ecology in the Philippine House of Representatives. Placer Dome,

which had fled the Philippines less than 18 months earlier, did not attend the first such hearing in May 1999, but instead sent PDTS President John Peter Neilans in its place. Speaking for Placer Dome and PDTS, Neilans promised that they would not abandon the people of Marinduque, declaring that "[w]e will not fade away."

190. Despite Neilans' representations to the contrary, Placer Dome and PDTS did fade away. And they also refused to appear at the very next congressional hearing on this issue, on October 9, 2001. On the night before the hearing, the new PDTS President, Ian Lewis, faxed a letter to Congressman Edmundo Reyes, Jr., announcing that PDTS would not attend that hearing.

191. Shortly after that, another fax, from PDTS arrived in the Congressman's office, this one attacking a leaked letter dated August 23, 2001 from Klohn Crippen, a Vancouver-based engineering firm retained by Placer Dome to review its remaining mining structures on Marinduque. That letter, which was addressed to, among others at PDTS, Ian Lewis, urged the immediate remedial action in order to avoid further "loss of life" on Marinduque. PDTS not only declined to take the action, it also refused to explain that decision at the congressional hearing.

192. Less than three months after this hearing, PDTS – like Placer Dome had previously done — suddenly closed its offices in Marinduque and abandoned the Philippines. Both Placer Dome and PDTS have refused to appear at all subsequent congressional hearings, despite the issuance of

congressional subpoenas compelling their attendance at such hearings.

193. Following Placer Dome's no-shows at the congressional hearings, Philippine President Gloria Macapagal-Arroyo even traveled to Canada to meet personally with Canadian Prime Minister Jean Chretien and Placer Dome representatives in late January 2002. During her visit, President Arroyo pleaded for Placer Dome to compensate the people of Marinduque for the extensive damage left behind on the island. Placer Dome, of course, summarily denied President Arroyo's request.

194. In the January 2002 meeting, the Placer Dome representatives maintained that there was no proof that Placer Dome had caused a lasting harm to Marinduque. The Province had struggled for years to raise sufficient funds to pay for an independent study to determine the full extent of the environmental damage caused by Placer Dome. But the Province was never able to raise enough money.

195. Nevertheless, President Arroyo was so infuriated by the conduct of the Placer Dome representatives at the January 2002 meeting that, upon returning to the Philippines, she promised the Province that she would set aside money in the Presidential budget to fund an independent study. These funds were subsequently used to fund the USGS' study of Marinduque.

IV. DAMAGES

A. Environmental Damages.

a. Calancan Bay.

196. As a direct and proximate result of Placer Dome's conduct, Calancan Bay is completely saturated with mine tailings. Heavy metals leach out of these tailings into the water and smothers coral reefs and kills flora, fauna, crustaceans, fish, and the surrounding wildlife dependent on these delicate ecosystems for their survival. Moreover, Placer Dome has dumped such a large volume of tailings into one area of Calancan Bay that it has created a 4.5-mile causeway of toxic tailings that stretches out to sea. This causeway gives off a thick smell of sulphur and it is littered with rusty pipe. When the wind blows, dust-containing tailings is blown from the causeway to nearby farms, where it infiltrates the soil, poisons the crops, and is inhaled by persons and animals in the area.

b. The Mogpog River.

197. As a direct and proximate result of Placer Dome's conduct, the Mogpog River is a "dead river." Aquatic life can no longer be sustained in the river waters. The river is polluted with acid mine drainage and toxic heavy metals. The stream of tailings that seep through the overflow hole in the Maguila-Guila Dam is endless and has not abated since Placer Dome's abandonment of the mine. Moreover, the USGS warns that, if any of the ten or so strong typhoons that hit the Philippines each year were to hit Marinduque and the dam, the dam would most

certainly collapse, cause a devastating flood, and, among other things, release more toxic materials into the river.

c. The Boac River.

198. As a direct and proximate result of Placer Dome's conduct, the Boac River is heavily polluted. Of the over 793 million gallons (U.S.) of toxic mine tailings that spewed from the Tapian Pit in 1996, 30 percent of the tailings still remain in the river. Moreover, thousands of sandbags filled with tailings are decaying along both banks of the river and reentering the river during rainstorms. Aquatic life can no longer be sustained in the river waters. The river is polluted from acid mine drainage and toxic heavy metals. Moreover, the citizens' free use of the bay is now obstructed by the causeway.

B. Economic Damages

a. Loss of Use and Enjoyment of Calancan Bay and Surrounding Areas.

199. Citizens can no longer safely swim and play in Calancan Bay and surrounding areas as a result of Placer Dome's polluting. Moreover, contrary to Placer Dome's assertion that the 4.5-mile causeway of mine tailings in Calancan Bay is a nice "beach" on which Marinduquenos can hold their picnics, the causeway poses a danger to human health because toxic dust is blown around by the wind and because the edges of the causeway, on which Marinduquenos continue to walk and fish, are becoming more and more unstable.

b. Destruction of the Fishing Industry and Lost Income.

200. Calancan Bay was once a fertile fishing ground. However, safely edible marine life is nowhere to be found. The once unobstructed bay is now clogged with a toxic causeway that interferes with navigations, commerce, fishing, and harvesting over and within the bay. As a result, fishermen, who used to fish in Calancan Bay, now have to travel three to four hours to fishing grounds at sea. These fishermen have been unable to catch as many fish in these new fishing grounds as they used to catch in Calancan Bay, even with the greater investment of time and money now required, because there is significantly more competition in these new fishing grounds. For the first time, these Marinduque fishermen are competing for fish with large commercial fishing boats, and they cannot possibly win such a competition. As a result of the foregoing, citizens of the Province have lost and will continue to lose significant income.

c. Destruction of the Tourist Industry.

201. As a direct and proximate result of Placer Dome's environmentally destructive mining activities, what was once a promising tourist industry in the Province no longer exists. The unique beauty of the Province's environment, which drew and would have continued to draw tourists in ever increasing numbers, has been rendered virtually useless for this purpose causing substantial economic losses for the Province and its citizens.

d. Non-User Losses.

202. As a direct and proximate result of Placer Dome's environmentally destructive mining activities, the natural resources of the Province have suffered great losses with respect to their Option, Existence, Bequest and Public Goods values.

C. Human Health Problems

a. Respiratory Problems.

203. Dust associated with mine tailings is blown around "like flour" in Marinduque. As a result, area residents inhale this dust that contains heavy metals. In March 2000, the NCDCS found that the level of lead in the air near the coastline of Botilao exceeded EPA standards and was almost double the level found in another area of Botilao. Residents of Botilao and other areas around Calancan Bay have experienced respiratory problems as a result.

b. Heavy Metal Toxicity.

204. In addition to inhaling toxic dust from dangerous mine tailings, Marinduquenos ingest toxic levels of heavy metals by eating fish from Calancan Bay and drinking water from polluted wells. The amounts for some residents are sometimes described as "sublethal," with the caveat that residents will continue to accumulate heavy metals in their body. Local hospitals report numerous cases of heavy metal blood poisoning. This poisoning can cause skin lesions that lead to bacterial infection, tumors, and amputation. Children born to mothers with heavy metal toxicity are often born mentally retarded.

Sometimes, the treatments for heavy metal toxicity are unavailable or too late, and Marinduquenos die.

D. Medical Monitoring and Care

205. The Province has incurred and will continue to incur substantial expenses for public health programs, including without limitation, medical monitoring, treatment, and care of those citizens exposed to and harmed by the continuing releases of toxic mine tailings into the environment of the Province

E. Necessary Remediation

206. Placer Dome breached the original Calancan Bay dumping permit that required disposal of mine tailings deep beneath the surface of the bay. Now, the bay is completely saturated with mine tailings, and Placer Dome has dumped such a large volume of tailings into one area of Calancan Bay that it has created a 4.5-mile long "beautiful beach" composed of toxic tailings that stretches out to sea. The environmental damage caused by Placer Dome's dumping is unfathomable. Placer Dome should be held to its promise and be forced to remediate and restore Calancan Bay.

207. By polluting Calancan Bay, Placer Dome has destroyed or driven away many species of coral, flora, fauna, crustaceans, and fish. To correct this wrong, Placer Dome should be required to pay for the re-introduction of harmed species after it cleans and restores the bay environment.

208. Placer Dome has also severely polluted the Mogpog and Boac Rivers and, as a result, aquatic life can no longer be sustained in either river. To correct this wrong, Placer Dome should be required to remediate and restore the river environments and to pay for the re-introduction of harmed species into the cleaned environments.

209. Additionally, when Placer Dome fled from the Philippine, it left the Tapian Pit and the San Antonio Pit in conditions that are dangerous to the surrounding environment. Accordingly, Placer Dome should be forced to renovate and rehabilitate both pits to an environmentally safe condition.

V. CAUSES OF ACTION

COUNT I: ENFORCING THE PUBLIC TRUST

210. The Province incorporates by reference the allegations contained above.

211. The Province is a body politic and political subdivision of the Republic of the Philippines. It is endowed with authority to exercise the powers of the Republic of the Philippines in promoting the general welfare; enhancing the right of its citizens to a balanced ecology; preserving the comfort and convenience of its people; and protecting the ecology, environment, and natural resources of its territory and preserving the same for enjoyment by future generations.

212. The Province also shares responsibility with the Republic of the Philippines for protecting the public interest in and enforcing the public trust

over the natural and wildlife resources of its territory, including, without limitation, the shores, beds, and waters of the Mogpog and Boac Rivers, downstream coastal areas, and Calancan Bay; and for ensuring that the Filipino people may enjoy the navigation of their waters, carry commerce over their waters, and have liberty of fishing and harvesting therein free from artificial obstruction or interference.

213. Placer Dome's improper trespasses and releases of acid mine drainage and toxic mine tailings have caused and continue to cause injury to the ecology, environment, and natural resources of the shores, beds and waters of the Mogpog and Boac Rivers, downstream coastal areas, and Calancan Bay. By these and related actions and failures to act, Placer Dome has unlawfully obstructed and interfered with, and continues to obstruct and interfere with, the navigation of the waters and the ability to carry commerce over the waters, including fishing and harvesting therein, and the public's use and enjoyment thereof.

214. The Province is entitled to an award of the maximum amount of damages allowed by law, including, without limitation, damages to the Province's natural resources, and damages for the costs of restoration, to their natural state, of all of the resources held in trust by the Province and harmed by Placer Dome's releases and trespasses, including, without limitation, the costs of restoring the ecology, environment, and natural resources of the shores, beds, and waters of the Mogpog and Boac Rivers and Calancan Bay.

COUNT 2: VIOLATIONS OF THE PHILIPPINE REVISED PENAL CODE (RECKLESS IMPRUDENCE)

215. The Province incorporates by reference the allegations contained above.

216. Pursuant to Article 100 of the Philippine Revised Penal Code, Placer Dome is civilly liable for damages resulting from the commission of any felony offense in connection with operations at the Mines.

217. In regard to Calancan Bay, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of reckless imprudence, in violation of Article 365 of the Philippine Revised Penal Code:

a. dumping mine tailings at the surface level of Calancan Bay in reckless disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in reckless disregard of the environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in reckless disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

218. In regard to the Mogpog River, the following acts and/or omissions by Placer Dome,

among others, constituted the felony offense of reckless imprudence, in violation of Article 365 of the Philippine Revised Penal Code:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best calculated to insure the safety of the Marinduquenos downriver.

219. In regard to the Boac River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of reckless imprudence, in violation of Article 365 of the Philippine Revised Penal Code:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with reckless disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

220. These acts and omissions by Placer Dome, among others, constituted the felony offense of reckless imprudence that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 3: VIOLATIONS OF THE PHILIPPINE REVISED PENAL CODE (SIMPLE IMPRUDENCE)

221. The Province incorporates by reference the allegations contained above.

222. Pursuant to Article 100 of the Philippine Revised Penal Code, Placer Dome is civilly liable for damages resulting from the commission of any felony offense in connection with operations at the Mines.

223. In regard to Calancan Bay, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of simple imprudence, in violation of Article 365 of the Philippine Revised Penal Code:

a. dumping mine tailings at the surface level of Calancan Bay in disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in disregard of the environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

224. In regard to the Mogpog River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of simple imprudence, in violation of Article 365 of the Philippine Revised Penal Code:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best calculated to insure the safety of the Marinduquenos downriver.

225. In regard to the Boac River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of simple imprudence, in violation of Article 365 of the Philippine Revised Penal Code:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

226. These acts and omissions by Placer Dome, among others, constituted the felony offense of simple imprudence that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 4: VIOLATIONS OF THE WATER CODE OF THE PHILIPPINES

227. The Province incorporates by reference the allegations contained above.

228. Pursuant to Article 100 of the Philippine Revised Penal Code, Placer Dome is civilly liable for damages resulting from the commission of any felony offense in connection with operations at the Mines.

229. In regard to Calancan Bay, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of dumping tailings from mining operations into rivers and waterways without prior permission, in violation of Article 77 of the Water Code of the Philippines:

a. dumping mine tailings at the surface level of Calancan Bay in disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in disregard of the

environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

230. In regard to the Mogpog River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of dumping tailings from mining operations into rivers and waterways without prior permission, in violation of Article 77 of the Water Code of the Philippines:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best calculated to insure the safety of the Marinduquenos downriver.

231. In regard to the Boac River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of dumping tailings

from mining operations into rivers and waterways without prior permission, in violation of Article 77 of the Water Code of the Philippines:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

232. These acts and omissions by Placer Dome, among others, constituted the felony offense of dumping tailings from mining operations into rivers and waterways without prior permission that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate

result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 5: VIOLATIONS OF THE PHILIPPINE FISHERIES DECREE OF 1975

233. The Province incorporates by reference the allegations contained above.

234. Pursuant to Article 100 of the Philippine Revised Penal Code, Placer Dome is civilly liable for damages resulting from the commission of any felony offense in connection with operations at the Mines.

235. In regard to Calancan Bay, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of discharging "mining" tailings into Philippine waters, in violation of Section 37 of the Philippine Fisheries Decree of 1975:

a. dumping mine tailings at the surface level of Calancan Bay in disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in disregard of the environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

236. In regard to the Mogpog River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of discharging "mining" tailings into Philippine waters, in violation of Section 37 of the Philippine Fisheries Decree of 1975:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best calculated to insure the safety of the Marinduquenos downriver.

237. In regard to the Boac River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of discharging "mining" tailings into Philippine waters, in violation of Section 37 of the Philippine Fisheries Decree of 1975:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine

tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

238. These acts and omissions by Placer Dome, among others, constituted the felony offense of discharging "mining" tailings into Philippine waters that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 6: VIOLATIONS OF THE PHILIPPINE NATIONAL POLLUTION CONTROL DECREE OF 1976

239. The Province incorporates by reference the allegations contained above.

240. Pursuant to Article 100 of the Philippine Revised Penal Code, Placer Dome is civilly liable for

damages resulting from the commission of any felony offense in connection with operations at the Mines.

241. In regard to Calancan Bay, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of disposing of a substance that causes "pollution" into the water, air, and/or land of the Philippines, in violation of Section 8 of the Philippine National Pollution Control Decree of 1976:

a. dumping mine tailings at the surface level of Calancan Bay in disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in disregard of the environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

242. In regard to the Mogpog River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of disposing of a substance that causes "pollution" into the water, air, and/or land of the Philippines, in violation of Section 8 of the Philippine National Pollution Control Decree of 1976:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best calculated to insure the safety of the Marinduquenos downriver.

243. In regard to the Boac River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of disposing of a substance that causes "pollution" into the water, air, and/or land of the Philippines, in violation of Section 8 of the Philippine National Pollution Control Decree of 1976:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the

pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

244. These acts and omissions by Placer Dome, among others, constituted the felony offense of disposing of a substance that causes "pollution" into the water, air, and/or land of the Philippines that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 7: VIOLATIONS OF THE PHILIPPINE NATIONAL WATER AND AIR POLLUTION CONTROL COMMISSION ACT

245. The Province incorporates by reference the allegations contained above.

246. Pursuant to Article 100 of the Philippine Revised Penal Code, Placer Dome is civilly liable for damages resulting from the commission of any felony offense in connection with operations at the Mines.

247. In regard to Calancan Bay, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of disposing of matter that causes "pollution" into the waters and/or into the air of the Philippines, in violation of Section 9 of the Philippine National Water and Air Pollution Control Commission Act:

a. dumping mine tailings at the surface level of Calancan Bay in disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in disregard of the environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

248. In regard to the Mogpog River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of disposing of matter that causes "pollution" into the waters and/or into the air of the Philippines, in violation of Section 9 of the Philippine National Water and Air Pollution Control Commission Act:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best calculated to insure the safety of the Marinduquenos downriver.

249. In regard to the Boac River, the following acts and/or omissions by Placer Dome, among others, constituted the felony offense of disposing of matter that causes "pollution" into the waters and/or into the air of the Philippines, in violation of Section 9 of the Philippine National Water and Air Pollution Control Commission Act:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

250. These acts and omissions by Placer Dome, among others, constituted the felony offense of disposing of matter that causes "pollution" into the waters and/or into the air of the Philippines that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 8: VIOLATIONS OF THE PHILIPPINE MINING ACT OF 1995

251. The Province incorporates by reference the allegations contained above.

252. Pursuant to Article 100 of the Philippine Revised Penal Code, Placer Dome is civilly liable for damages resulting from the commission of any felony offense in connection with operations at the Mines.

253. The following acts and/or omissions by Placer Dome, among others, constituted the felony offense of willfully violating or grossly neglecting to abide by the terms and conditions of an Environmental Compliance Certificate ("ECC"), in

violation of Section 108 of the Philippine Mining Act of 1995:

a. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

b. failing to repair the plug in the drainage tunnel within a reasonable time.

254. These acts and omissions by Placer Dome, among others, constituted the felony offense of willfully violating or grossly neglecting to abide by the terms and conditions of an ECC that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 9: QUASI-DELICT (NEGLIGENCE)

255. The Province incorporates by reference the allegations contained above.

256. At all relevant times herein, Placer Dome owed a duty of care to the Province and the people of Marinduque to conduct all operations related to the Mines in a reasonable manner.

257. In regard to Calancan Bay, Placer Dome breached its duty of care to the Province and the people of Marinduque by committing, among others, the following acts of negligence:

a. dumping mine tailings at the surface level of Calancan Bay in disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in disregard of the environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

258. In regard to the Mogpog River, Placer Dome breached its duty of care to the Province and the people of Marinduque by committing, among others, the following acts of negligence:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best

calculated to insure the safety of the Marinduquenos downriver.

259. In regard to the Boac River, Placer Dome breached its duty of care to the Province and the people of Marinduque by committing, among others, the following acts of negligence:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

260. These acts and omissions by Placer Dome, among others, constituted negligence that proximately caused injury to the Province and the

people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 10: QUASI-DELICT (PUBLIC AND/OR PRIVATE NUISANCE)

261. The Province incorporates by reference the allegations contained above.

262. Pursuant to Article 694 of the Civil Code of the Philippines, Placer Dome is liable for damages resulting from any public and/or private nuisance committed in connection with operations at the Mines, including any act that: (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property.

263. In regard to Calancan Bay, the following acts and/or omissions by Placer Dome, among others, constituted a public and/or private nuisance:

a. dumping mine tailings at the surface level of Calancan Bay in disregard of the permit requirement that tailings be buried beneath the bay;

b. dumping mine tailings at the surface level of Calancan Bay in disregard of the environmental damage being caused to the bay and the surrounding area; and

c. dumping mine tailings at the surface level of Calancan Bay in disregard of the health problems being suffered by the Marinduquenos as a result of the environmental damage.

264. In regard to the Mogpog River, the following acts and/or omissions by Placer Dome, among others, constituted a public and/or private nuisance:

a. failing to design the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

b. failing to construct the Maguila-Guila Dam to withstand heavy seasonal rainfall and/or typhoons;

c. failing to rebuild the Maguila-Guila Dam so as to prevent toxic silt from flowing into the Mogpog River; and

d. failing to rebuild the Maguila-Guila Dam properly, and in the manner best calculated to insure the safety of the Marinduquenos downriver.

265. In regard to the Boac River, the following acts and/or omissions by Placer Dome, among others, constituted a public and/or private nuisance:

a. failing to perform an environmental risk assessment of the Tapian Pit before beginning to dump mine tailings into it;

b. failing to construct the original plug in the drainage tunnel so as to prevent mine tailings from seeping into the Boac River through the drainage tunnel;

c. failing to construct the original plug in the drainage tunnel so as to withstand the pressure generated when Placer Dome's engineers drilled into the drainage tunnel to install the second plug;

d. drilling into the drainage tunnel to install the second plug with disregard for the consequences on the original plug and the drainage tunnel, and without regard for the possibility of a plug and tunnel collapse; and

e. failing to repair the plug in the drainage tunnel within a reasonable time.

266. These acts and omissions by Placer Dome, among others, constituted a public and/or private nuisance that proximately caused injury to the Province and the people of Marinduque. As a direct and proximate result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 11: BREACH OF CONTRACT

267. The Province incorporates by reference the allegations contained above.

268. On or around 1997, Placer Dome caused Marcopper to assign all of its insurance coverages to

Placer Dome pursuant to an Assignment Agreement. Placer Dome thereafter recovered at least $12-13 million of insurance proceeds under one or more of the relevant insurance agreements.

269. The Province and the people of Marinduque are the rightful and intended third-party beneficiaries of insurance agreements related to mine operations on Marinduque, and Placer Dome, as assignee, necessarily had to secure and use the assigned insurance proceeds to undertake and/or cause others to undertake extensive environmental and medical remediation programs on Marinduque.

270. The Province and the people of Marinduque were intended third party beneficiaries of the Assignment Agreement and the underlying insurance agreements.

271. Placer Dome breached its obligations under the relevant agreements by committing, among others, the following acts and/or omissions:

a. failing to secure coverages;

b. failing to use any of the assigned insurance proceeds to undertake the required environmental and medical remediation programs on Marinduque; and

c. failing to use any of the assigned insurance proceeds to cause others to undertake the required environmental remediation and medical monitoring programs on Marinduque.

272. These acts and omissions by Placer Dome, among others, constituted a breach of contract that caused injury to the Province and the people of Marinduque. As a result of such injury, the Province and the people of Marinduque incurred very substantial.

COUNT 12: BREACH OF CONTRACT

273. The Province incorporates by reference the allegations in Paragraphs 1 through X.

274. John Willson's April 11, 1996 letter to then Philippine President Fidel Ramos created a binding contract between Placer Dome, on the one hand, and the Province and the people of Marinduque, on the other hand.

275. In the letter, Willson promised President Ramos that "Placer Dome w[ould] provide full technical and financial support to Marcopper in implementation of compensation and rehabilitation programs." Willson, as President of the company, had the authority to make this promise on Placer Dome's behalf, and his promise was supported by adequate consideration.[3] Moreover, although made in a letter to President Ramos and the government of the Philippines, Willson's promise was directed at the Province and the people of Marinduque. Accordingly, the letter created a binding contract between Placer Dome, on the one hand, and the

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[3] Pursuant to article 1350 of the Civil Code of the Philippines, in "contracts of pure beneficence," "the mere liberality of the benefactor" acts as consideration.

Province and the people of Marinduque, on the other hand.

276. In the alternative, the letter created a binding contract between Placer Dome and the Philippine government, and the Province and the people of Marinduque were intended third party beneficiaries of that contract.

277. Placer Dome breached its contract with the Province and the people of Marinduque by committing, among others, the following acts and/or omissions:

a. failing to fully compensate all victims of the 1996 Boac River disaster;

b. failing to pay sufficient funds into the EGF to fully compensate all victims of the 1996 Boac River disaster;

c. failing to reimburse the Philippine government for expenses incurred and continuing to be incurred in responding to the 1996 Boac River disaster;

d. failing to reimburse the Province for expenses incurred and continuing to be incurred in responding to the 1996 Boac River disaster;

e. failing to ensure third party monitoring of residents' health and of the quality of their drinking water;

f. failing to rehabilitate and remediate the Boac River and the surrounding areas, including the marine areas identified by Willson in the letter;

g. failing to establish flood protection measures and to improve road access for villagers;

h. failing to have an independent third party implement health and environmental monitoring programs; and

i. failing to provide any technical or financial support to implement the "urgent compensation and rehabilitation programs."

278. These acts and omissions by Placer Dome, among others, constituted a breach of contract that caused injury to the Province and the people of Marinduque. As a result of such injury, the Province and the people of Marinduque incurred very substantial damages.

COUNT 13: PROMISSORY ESTOPPEL

279. The Province incorporates by reference the allegations contained above

280. In his April 11, 1996 letter, John Willson, the President of Placer Dome, promised President Ramos that "Placer Dome w[ould] provide full technical and financial support to Marcopper in implementation of compensation and rehabilitation programs." Willson made this promise, on Placer

Dome's behalf, with the intent that the Province and the people of Marinduque would rely on it.

281. The Province and the people of Marinduque did subsequently rely on Willson's promise to their detriment by, among other things, foregoing taking more aggressive civil and criminal actions to compensate victims of the 1996 Boac River disaster and to punish those responsible for causing it.

282. Placer Dome breached Willson's promise by among others things:

a. failing to fully compensate all victims of the 1996 Boac River disaster;

b. failing to pay sufficient funds into the EGF to fully compensate all victims of the 1996 Boac River disaster;

c. failing to reimburse the Philippine government for expenses incurred and continuing to be incurred in responding to the 1996 Boac River disaster;

d. failing to reimburse the Province for expenses incurred and continuing to be incurred in responding to the 1996 Boac River disaster;

e. failing to ensure third party monitoring of residents' health and of the quality of their drinking water;

f. failing to rehabilitate and remediate the Boac River and the surrounding areas, including the marine areas identified by Willson in the letter;

g. failing to establish flood protection measures and to improve road access for villagers;

h. failing to have an independent third party implement health and environmental monitoring programs; and

i. failing to provide any technical or financial support to implement the "urgent compensation and rehabilitation programs."

283. Place Dome should be estopped from failing to perform according to the terms of Willson's and Placer Dome's promises because the Province and the people of Marinduque relied on those promises to their detriment by foregoing pursuing more aggressive civil and criminal actions to compensate victims of the disaster and to punish those responsible for causing it.

284. The Province and the people of Marinduque were injured when they detrimentally relied on Willson's and Placer Dome's promises, As a result of such injury, the Province and the people of Marinduque incurred very substantial damages.

PRAYER

WHEREFORE, the Province respectfully prays that Placer Dome be cited to appear and answer herein, and that upon trial of this cause, judgment be entered in the Province's favor, and against Placer Dome, with. said judgment providing for:

a. An order of the Court directing Placer Dome to undertake and complete (and/or finance the undertaking and completion of) the environmental cleanup of the affected areas of, and restore the natural resources of, Marinduque, including, but not limited to, the Tapian Pit, the San Antonio Pit, Calancan Bay, the Mogpog River system, the Boac River system, downstream coastal areas, and the surrounding areas. This environmental cleanup must include, among other things, ensuring potable water in the region and healthy hunting and fishing grounds, the repair of deteriorating mine structures and the Maguila-Guila Dam, and for the renovating and rehabilitating of the Tapian Pit and the San Antonio Pit;

b. An order of the Court directing Placer Dome to create and fund adequately an environmental monitoring fund;

c. An order of the Court directing Placer Dome to create and fund adequately a medical monitoring fund;

d. An award of damages wholly compensating the Province and the people of Marinduque for the economic and health injustices they have suffered;

e. The maximum award of exemplary damages permitted by law;

f. An award of pre judgment and post judgment interest at the maximum rate permitted by contract, law, or equity;

f. An award of the Province's costs and reasonable attorney's fees; and.

g. Such other and further relief, either equitable or legal, that the Court deems appropriate.

Dated: October 4, 2005 SNELL & WILMER L.L.P.

By: /s/ Patrick G. Byrne
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